IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRP.No. 611 of 2007()

CMA.165/2004 of I ADDL.DISTRICT COURT, THRISSUR
(I.A.No.7475/04 & I.A.NO.7474/2004 IN O.S.NO.2673/2000 OF II ADDITIONAL MUNSIFF COURT, THRISSUR.
.....

REVN. PETITIONER: APPELLANTS/PETITIONERS/DEFENDANTS:
----

1. JOY, S/O.KOCHAPPAN, CHIRAMEL HOUSE, KODANNUR VILLAGE, THRISSUR TALUK.

2. THANKAMMA, D/O.KOCHAPPAN, -DO-.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT/ RESPONDENT/RESPONDENT/PLAINTIFF:

RAVI, S/O.KOCHAKKEN, KOLATTU HOUSE, KODANNUR VILLAGE, THRISSUR TALUK, REPRESENTED BY POWER OF ATTORNEY HOLDER INDIRA, W/O.RAVI, -DO-.

BY ADV. SRI.C.CHANDRASEKHARAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.No.1624 OF 2007IN C.R.P.No.611 OF 2007

DISMISSED

14.08.2007 **Sd/- M.N.KRISHNAN,JUDGE**

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

==========

C.R.P.No.611 of 2007

==========

Dated this the 14th day of August, 2007

ORDER

The civil revision is preferred against the order of the Additional District Court, Thrissur in C.M.A.165/2004, whereby the said court affirmed the order of the Second Additional Munsiff's Court, Thrissur in I.A. Nos.7474/2004 and 7475/2004. Defendants 2 and 3 in the suit filed the application before the court below with a prayer to condone the delay of 530 days and to set aside the ex parte decree. The court below did not find in favour and that has been confirmed by the Appellate Court. The learned counsel for the revision petitioner submits before me that the principles of natural justice requires an opportunity to be given to the party. I agree with that proposition but by virtue of the decision of this Court reported in **Plantation Corporation of Kerala Ltd. V. Hussain (1998(1)KLT 1008)** and **Sreedhara Kurup V. Mickel (1968 KLT 599)** caution is given to the effect that opportunity cannot be provided if there is gross negligence or grave misconduct. It was also held that it

shall not be taken as a mere routine affair. Now the contention of the petitioner herein is that the third defendant was employed at Kasargode as a casual worker and that prevented him from attending the court. But the sister was available here. The contention in the suit by the defendants are that the first defendant did not have any right to transfer the property in favour of the plaintiff. The Appellate Court has extracted that even the years of the occupation of the defendants had been left blank and they have not stated anything about their right over the property except for the bald averments that D1 has no transferable right over the property. I am conscious that the merit of the case shall not be a main ground for refusing or entertaining an application of this nature. But what is to be explained is the delay of 530 days. Person against whom a suit has been filed and in answer where he has filed a written statement he is expected to enquire about the position of the case atleast once in a while. He cannot sit tight at a place of his choice and then come to the court after one and a half years or two years contending that since he was way the decree has to be set aside. This conduct of the party will indicate that there is gross negligence and misconduct in the conduct of the case. Further in this case the petitioners even did not mount the box

to give evidence for withstanding the cross examination. By merely stating in the affidavit that one was away Kasaragode is not sufficient when especially the delay is of 530 days. Even according to the learned counsel for the revision petitioner there cannot be any document to prove his absence for 530 days because there will not be any document to show his presence at Kasaragode. So in that background it was all the more necessary for him to conduct himself properly by examining him before the court and face cross examination. He has not done so. The jurisdiction of this Court under Section 115 of the Civil Procedure Code is very limited. Unless there is illegality or irregularity, this Court not expected to interfere with the reasoned orders passed by the courts below. So on the jurisdictional aspect also I cannot entertain this revision. Therefore, the revision petition lacks merit and it is dismissed. Needless to say the revision petitioner can continue to prosecute the appeal which is pending against the decree before the appropriate forum.

M.N.KRISHNAN,JUDGE

dvs